THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 16930 of 2006

Date:23-08-2006

Between:
Manohar Vasudev Naik & others

Petitioners

And
The Commissioner, Narayanapet Municipality, Narayanpet,
Mahabubnagar District.

Respondent

THE HONOURABLE SRI JUSTICE P.S.NARAYANA

W.P.No. 16930 of 2006

ORDER:

1. Heard both the counsel.

2. The writ petition is filed for a writ of Mandamus declaring the action of the respondent in taking away the tools and equipments of construction by the respondent at site from premises No.1-6-15, 1-6-16, 1-6-16/1, Civil Lane, Palla Burz, Narayanapet, Mahabubnagar district, belonging to the petitioners as illegal, arbitrary and unconstitutional and forbear them from carrying out such acts in future and pass such other suitable orders.

3. It is stated that the petitioners own ancestral property and petitioner No.1 is the Karta of the Joint Family property. The petitioners 2 to 5 are coparceners. The petitioners are absolute owners and possessors of the said property bearing Municipal No.1-6-15, 1-6-16 and 1-6-16/1 at Civil Lines, Palla Burz, Narayanpet, Mahboobnagar District. Several other factual details also had been narrated in Paragraph 4 of the affidavit filed in support of the writ petition. It was also stated that while narrating the prior history that to the utter surprise of the petitioners, the respondent issued proceedings No. D/1334/88 dated 3.12.1988 intimating that the permission granted to the petitioners on 3-6-1988 was cancelled as per resolution No.66 dated 13-11-1988 and aggrieved by the same, the petitioners filed W.P.No.18712 of 1988 and the same was disposed of by order dated 28-8-1996 wherein it was observed as hereunder:

> *"This writ petition has been filed questioning the proceedings of the commissioner Municipality, Narayanpet, and contained in Procs. No.D/1334/88,*

by which the permission for construction, which was hitherto granted to the petitioner was cancelled. The main complaint is that the impugned order was passed without issuing any prior notice and affording opportunity to the petitioner. The second complaint is that the impugned order is bereft of reasons. Both the contentions are well founded. We cannot countenance the oral submission of Mr.G.Chandraiah, the learned counsel for the respondent that the land does not belong to the petitioner. That is not the reason stated in the impugned order. For the reasons that there is a glaring infraction of principles of natural justice and that it is also bereft of reasons as reasons are necessarily to be stated as the impugned order results in civil consequences, the impugned order is set-aside. However, this order shall not preclude the respondent from issuing notice afresh to the petitioner specifying reasons and affording opportunity and taking decision afresh. Until the said fresh decision is taken after complying the directions with regard to principles of natural justice, status-quo with regard to the structures as obtained on this day shall be maintained. Accordingly, the writ petition is disposed of standing counsel's fee is fixed at Rs.1,200/- payable within two months after the presentation of the bill"

4. It is also stated that after the writ petition was disposed of the respondent maintained silence till date and did not initiate any further proceedings. On the contrary since the time-lag had taken place after the last permission and respondent might plead that the earlier permission lapsed therefore, the petitioners again applied for permission to construct and complete the said compound wall for which foundations had been laid in the past as per earlier proceedings and permissions granted by the respondent. The respondent by proceedings dated 1-10-2005 bearing No.G1/699/2005 had accorded the said permission afresh. As per said permission petitioners started the construction of compound wall and while the construction work was in progress the respondent again came to the site on 17-5-2006 and carried away the tools and equipments of

construction despite showing the permission for construction by the petitioners through their men at work at site. The said action is being questioned by the writ petitioners. Both the counsel made certain submissions in relation to their respective stands.

5. In the light of the facts and circumstances which had been explained in the affidavit filed in support of the writ petition, this court is of the considered opinion that the writ petition be disposed of with the following direction:

> The respondent to follow the procedure as contemplated by the provisions of A.P. Municipalities Act,1965 and the Rules made thereunder and till then not to interfere with the existing constructions until an appropriate decision is taken in accordance with the procedure as contemplated by the provisions of the Act aforesaid or the Rules.

6. Accordingly, the writ petition is disposed of . No order as to costs.

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23-08-2006

Note:
C.C. in three days.
B/o.
Stp